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BEFORE THE DEPARTMENT OF CORPORATIONS
 OF THE STATE OF CALIFORNIA

)	
In the Matter of the Accusation of)	File No.: 100-2918
THE CALIFORNIA CORPORATIONS)	
COMMISSIONER,)	ACCUSATION
Complainant,)	
)	
vs.)	
)	
Sunshine Liquor doing business as)	
Sunshine Liquor, Inc. and Sunshine Check)	
Cashing)	
Respondent.)	

Complainant, the California Corporations Commissioner, (“Commissioner”) is informed and believes, and based upon such information and belief, alleges and charges Respondent as follows:

INTRODUCTION

On December 31, 2004, the Commissioner of the Department of Corporations (“Department”) issued Respondent, Sunshine Liquor doing business as Sunshine Liquor, Inc. and Sunshine Check Cashing, a deferred deposit transaction originator license (File No. 100-2918) pursuant to the California Deferred Deposit Transaction Law (“CDDTL”) set forth in California Financial Code sections 23000 et seq. (All future references to section are to the Financial Code unless indicated otherwise.)

ACCUSATION

1 By reason of Respondent's numerous and continuing violations of the CDDTL, the
2 Commissioner pursuant to section 23052 seeks an order to revoke the deferred deposit transaction
3 originator license of Respondent.

4 I

5 FACTUAL BACKGROUND

6 1. Respondent, Sunshine Liquor, doing business as Sunshine Liquor, Inc., and also doing
7 business as Sunshine Check Cashing, is a California corporation doing business at its place of
8 business, which is located at 12935 Nelson Street, Garden Grove, California 92840. The owner,
9 president, chief executive officer (CEO) and manager of Respondent is Joseph Dibsy.

10 2. The Department is mandated to enforce all provisions of the CDDTL. Respondent
11 has engaged in violations of the CDDTL as discussed below.

12 3. Since at least January 1, 2006, Respondent has engaged in the business of deferred
13 deposit transactions by offering, originating and making deferred deposit transactions as described
14 below.

15 4. A deferred deposit transaction is a written transaction whereby one person gives funds
16 to another person upon receipt of a personal check and it is agreed that the personal check shall
17 not be deposited until a later date. These loans are sometimes referred to as "payday advances"
18 or "payday loans."

19 5. In August 2005 Respondent filed with the Department an application for a license to
20 make deferred deposit transactions and included a Declaration designated as "Exhibit K" to the
21 application and signed under penalty of perjury by president/CEO Joseph Dibsy stating:

22 **I (we) have obtained and read copies of the California Deferred Deposit**
23 **Transaction Law (Division 10 of the California Financial Code) and the Rules**
24 **(Chapter 3, Title, 10, California Code of Regulations) and am familiar with**
25 **their content: and,**

26 **I (we) agree to comply with all the provision[s] of the California Deferred Deposit**
27 **Transaction Law, including any rules or orders of the Commissioner of**
28 **Corporations.**

Respondent's Declaration to the application also states that "by signing this declaration" "the applicant hereby agrees (or attests) or declares understanding of the following items listed below:"

1. That the applicant will submit to periodic examinations by the Commissioner of Corporations as required by the California Deferred Deposit Transaction Law.
2. That the applicant will keep and maintain all records for 2 years following the last entry on a deferred deposit transaction and will enable an examiner to review the record keeping and reconcile each consumer deferred deposit transaction with documentation maintained in the consumer's file records.
3. That the applicant understands the examination process involving the reconciliation of records will be facilitated if the applicant maintains, at minimum, a ledger or listing of the following current and undated information for each deferred deposit transaction (as specified in Financial Code section 23035): customer's name and address, account number, check number, amount provided, fee, amount of check, corresponding annual percentage rate (e.g. 14-day or 30-day) and the deferred due date.
4. That the applicant will maintain a file of all advertising for a period of 90 days from the date of its use, which will be available to the Commissioner of Corporations upon request.
5. That the applicant will file with the Commissioner of Corporations an amendment to this application prior to any material change in the information contained in the application for licensure, including, without limitation, the plan of operation.
6. That the applicant will file with the Commissioner of Corporations any report required by the Commissioner.
7. That the applicant hereby attests that the applicant (including officers, directors and principals) has not engaged in conduct that would be cause of denial of a license.

6. As a part of the application process Respondent was required to and did complete another Declaration designated as "Exhibit L" to the application, which Joseph Dibsy signed under penalty of perjury stating:

1 1. The applicant will comply with all federal and state laws and regulations
2 (including Division 10, commencing with Section 23000, of the Financial
3 Code), if it offers, arranges, acts as an agent for, or assists a deferred deposit
4 originator in the making of a deferred deposit transaction (Financial Code
5 Section 23037(i).)

6 7. On December 23, 2005, a letter accompanied the Commissioner's issuance of a CDDTL
7 license to Respondent, which in part informed Respondent of the following:

8 [T]here are certain obligations and responsibilities that a licensee must
9 comply with. The following information about a licensee's obligations
10 and responsibilities regarding certain requirements of the California
11 Deferred Deposit Transaction Law is provided for your reference . . . a
12 licensee should review and become familiar with all provisions of the law
13 and rules and regulations. . . .

14 5. A licensee is subject to statutory books and records requirements . . .
15 (Section 23024.)

16 8. Notwithstanding knowledge regarding the licensure requirements, Respondent willfully
17 and knowingly engaged in CDDTL violations. The Department examiner's review of Respondent's
18 business revealed multiple violations of the CDDTL warranting revocation.

19 II

20 DEFERRED DEPOSIT TRANSACTION LAW

21 9. Respondent, as a licensee, was required to comply with basic legal requirements imposed
22 on all CDDTL licensees; including maintaining books and records and a minimum net worth.

23 10. An applicant for a CDDTL license is required to maintain a minimum net worth of
24 \$25,000 pursuant to section 23007, which states in relevant part:

25 The applicant shall file with the application financial statements prepared in
26 accordance with generally accepted accounting principles and acceptable to
27 the commissioner that indicate a net worth of at least twenty-five thousand
28 dollars (\$25,000).

11. Licensees are restricted in how they transact business by section 23023, which states:

No licensee shall transact the business licensed or make any transaction
provided for by this division under any other name or at any other place
of business than that named in the license except pursuant to a currently
effective written order of the commissioner authorizing the other name or
other place of business.

12. Section 23024 mandates that every licensee comply with the following requirement concerning books and records:

Each licensee shall keep and use books, accounts, and records that will enable the commissioner to determine if the licensee is complying with the provisions of this division and with the rules and regulations promulgated by the commissioner. Each licensee shall maintain any other records as required by the commissioner. The commissioner or a designee of the commissioner may examine those records at any reasonable time. Upon the request of the commissioner, a licensee shall file an authorization for disclosure of financial records of the licensed businesses pursuant to Section 7473 of the Government Code. All records shall be kept for two years following the last entry on a deferred deposit transaction and shall enable an examiner to review the record keeping and reconcile each consumer deferred deposit transaction with documentation maintained in the consumer's deferred deposit transaction file records.

13. Section 23026 requires the filing of an annual report and in relevant part states:

On or before March 15 of each year, beginning March 2006, each licensee shall file an annual report with the commissioner pursuant to procedures that the commissioner shall establish.

California Code of Regulations, title 10, section 2030, required licensees to provide and verify an annual report to the Commissioner, which includes in part the following information:

- The total number of deferred deposit transactions made
- The total dollar amount number of deferred deposit transactions made
- The total number of individual customers who obtained deferred deposit transactions . . .
- The minimum dollar amount of deferred deposit transactions
- The maximum dollar amount of deferred deposit transactions
- The average dollar amount of deferred deposit transactions . . .
- The average annual percentage rate (APR) agreed to . . .
- The average number of days of deferred deposit transactions
- The total number of returned checks from deferred deposit transactions
- The total dollar amount of returned checks from deferred deposit transactions

1 14. Section 23035 set forth the requirements for deferred deposit transactions agreements
2 and, in relevant, part states:

3 (a) A licensee may defer the deposit of a customer's personal check for up to 31
4 days, pursuant to the provisions of this section. The face amount of the check
5 shall not exceed three hundred dollars (\$300). Each deferred deposit transaction
6 shall be made pursuant to a written agreement as described in subdivision (e) that
7 has been signed by the customer and by the licensee or an authorized
8 representative of the licensee. . . .

9 (c) Before entering into a deferred deposit transaction, licensees shall distribute
10 to customers a notice that shall include, but not be limited to, the following:

11 (1) Information about charges for deferred deposit transactions.

12 (2) That if the customer's check is returned unpaid, the customer may be
13 charged an additional fee of up to fifteen dollars (\$15).

14 (3) That the customer cannot be prosecuted in a criminal action in
15 conjunction with a deferred deposit transaction for a returned check or be
16 threatened with prosecution.

17 (4) The department's toll-free telephone number for receiving calls
18 regarding customer complaints and concerns.

19 (5) That the licensee may not accept any collateral in conjunction with a
20 deferred deposit transaction.

21 (6) That the check is being negotiated as part of a deferred deposit
22 transaction made pursuant to Section 23035 of the Financial Code and is
23 not subject to the provisions of Section 1719 of the Civil Code. No
24 customer may be required to pay treble damages if this check does not
25 clear. . . .

26 (d) The following notices shall be clearly and conspicuously posted in the
27 unobstructed view of the public by all licensees in each location of a business
28 providing deferred deposit transactions in letters not less than one-half inch in
height:

(1) The licensee cannot use the criminal process against a consumer to collect
any deferred deposit transaction.

(2) The schedule of all charges and fees to be charged on those deferred
deposit transactions with an example of all charges and fees that would be
charged on at least a one-hundred-dollar (\$100) and a two-hundred-dollar
(\$200) deferred deposit transaction, payable in 14 days and 30 days,
respectively, giving the corresponding annual percentage rate. The
information may be provided in a chart as follows: . . .

(e) An agreement to enter into a deferred deposit transaction shall be in writing and shall be provided by the licensee to the customer. The written agreement shall authorize the licensee to defer deposit of the personal check, shall be signed by the customer, and shall include all of the following:

- (1) A full disclosure of the total amount of any fees charged for the deferred deposit transaction, expressed both in United States currency and as an APR as required under the Federal Truth In Lending Act and its regulations.
- (2) A clear description of the customer's payment obligations as required under the Federal Truth In Lending Act and its regulations.
- (3) The name, address, and telephone number of the licensee.
- (4) The customer's name and address.
- (5) The date to which deposit of check has been deferred (due date).
- (6) The payment plan, or extension, if applicable as allowed under subdivision (c) of Section 23036.
- (7) An itemization of the amount financed as required under the Federal Truth In Lending Act and its regulations.
- (8) Disclosure of any returned check charges.
- (9) That the customer cannot be prosecuted or threatened with prosecution to collect.
- (10) That the licensee cannot accept collateral in connection with the transaction.
- (11) That the licensee cannot make a deferred deposit transaction contingent on the purchase of another product or service.
- (12) Signature space for the customer and signature of the licensee or authorized representative of the licensee and date of the transaction.
- (13) Any other information that the commissioner shall deem necessary by regulation.

(f) The notice required by subdivision (c) shall be written and available in the same language principally used in any oral discussions or negotiations leading to execution of the deferred deposit agreement and shall be in at least 10-point type.

15. Fees a licensee may charge a consumer are limited by section 23036 that in relevant part states:

(e) A fee not to exceed fifteen dollars (\$15) may be charged for the return of a dishonored check by a depository institution in a deferred deposit transaction. A single fee charged pursuant to this subdivision is the exclusive charge for a dishonored check. No fee may be added for late payment.

(f) No amount in excess of the amounts authorized by this section shall be directly or indirectly charged by a licensee pursuant to a deferred deposit transaction.

16. Section 23037 limits a licensee's transactions and activities and in relevant part states:

In no case shall a licensee do any of the following:

(a) Accept or use the same check for a subsequent transaction, or permit a customer to pay off all or a portion of one deferred deposit transaction with the proceeds of another.

(f) Engage in any unfair, unlawful, or deceptive conduct, or make any statement that is likely to mislead in connection with the business of deferred deposit transactions.

17. California Code of Regulations, title 10, section 2025, subdivisions (b) and (c)(1) specifies requirements concerning books and records that as set forth below.

(b) A licensee shall maintain the following books, records and accounts at the licensed place of business provided in its long form application, provided that records maintained at the each additional location are available at the licensed location within 24 hours of request: records demonstrating minimum net worth requirements in compliance with Section 23007 of the Financial Code including quarterly unaudited balance sheets, records demonstrating surety bond requirements in compliance with Section 23013 of the Financial Code, a list of licensed locations by address and license number, the advertising file as provided in subsection (f), bank or other financial institution statements, and any other records identified by written demand of the Commissioner.

(c)(1) Except as provided in subsection (e), records to be maintained at each licensed business location for each deferred deposit transaction shall include at least the following: the deferred deposit transaction agreement, evidence of the check, written disclosure(s) used to provide notice in compliance with subdivision (c) of Section 23035 of the Financial Code, record of any and all extensions of time or payment plans for repayment of an existing deferred deposit transaction, record of time periods for each transaction, record of transaction fees and charges, and record of transaction payments.

III

DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS

18. The Commissioner's examiner notified Respondent several weeks in advance about the Department's examination of Respondent's business operations and its books and records.

1 19. On March 19, 2007, the Department’s examiner conducted a review of
2 Respondent’s business. The examiner found that the licensee failed to post the license,
3 disclosure notice and the schedule of fees as required by section 23035. When the Department
4 examiner brought these deficiencies to the attention of Respondent’s owner and manager,
5 Joseph Dibsy, he showed the examiner a handwritten notice on the wall. However, this notice
6 did not properly disclose the amount charged and the annual percentage rate (“APR”) and other
7 disclosures required by section 23035.

8 20. Additionally, the licensee failed to maintain adequate books and records as required
9 by section 23024 and California Code of Regulations, title 10, section 2025. Respondent does
10 not distribute to customers the either the written agreement or the required disclosure notice in
11 violation of sections 23035, subdivision (c) and (e).

12 21. During discussions with the Department examiner’s about the business operation
13 Respondent’s president and manager, Joseph Dibsy, stated he does not maintain any type of
14 record or log for the deferred deposit transactions and that the only document he used is one loan
15 application per customer, regardless of the number of transactions. However, Respondent was
16 not consistent with recording transactions dates, due dates, and loan amounts on the loan
17 application and the applications do not contain the APR. Thus, Respondent’s loan application
18 does not contain the required items set forth in section 23035, subdivision (e).

19 22. Furthermore, Respondent’s loan application states that legal and collection fees
20 would be charged and states a fee of 10% or \$25 would be charged for non-sufficient funds,
21 which exceeds the statutory maximum of \$15. Thus, Respondent’s fees and excess charges
22 violate section 23036, subdivisions (e) and (f). Moreover, the loan application contains false and
23 misleading statements, such as the customer may be sued for the maximum amount allowable
24 under Washington State law, in violation of section 23037, subdivision (f).

25 23. The licensee allows use of the same customer check for subsequent transactions in
26 violation of section 23037, subdivision (a). The licensee failed to maintain evidence of the
27 customers’ checks and negotiates loans for more than thirty-one (31) days, in violation of
28 California Code of Regulations, title 10, section 2025 and section 23035, subdivision (a). The

1 licensee transacts business under at least two names, “Check Masters” and “Sunshine Check
2 Cashing #2” that are unlicensed in violation of section 23023.

3 24. Given the lack of records maintained by Respondent, the Department examiner asked
4 the owner what information he uses to complete the annual report. In response Mr. Dibsy stated
5 that he used the loan applications. However, since the loan applications do not provide the APR,
6 the average APR cannot be calculated using these documents and because Respondent
7 inconsistently recorded transaction dates, due dates, loan amounts(s) and loan status,
8 Respondents’ annual report cannot be a true and accurate account of Respondent’s deferred
9 deposit transaction activity in 2006. Thus, Respondent violated section 23026 and California
10 Code of Regulations, title 10, section 2030.

11 25. The licensee’s financial statements as of November 30, 2006, show a net worth of
12 \$24,626.70, which is below the minimum of \$25,000 required by section 23007.

13 26. In summary, Respondent has violated numerous provisions of the CDDTL. First, the
14 licensee’s net worth was deficient and it used unauthorized names in violation of sections 23007
15 and 23023. Next, the licensee failed to maintain deferred deposit transactions books and records
16 as required by section 23024 and by the California Code of Regulations, title 10, section 2025,
17 subdivision (b). Additionally, the licensee filed a false annual report in violation of section
18 23026, and California Code of Regulations, title 10, section 2030. The licensee’s written
19 agreement with customers exceeded the maximum thirty-one (31) days and the agreement did
20 not contain all the required disclosures in violation of 23035, subdivision (a). In violation of
21 section 25035, subdivisions (c), (d) and (e), the licensee failed to post its license, required notices
22 and schedule of fees and the licensee failed to provide written notice to the consumer as required
23 prior to entering into an a deferred deposit agreement. Moreover, the licensee also violated
24 section 23036, subdivisions (e) and (f), by charging excessive fees and charges. The licensee
25 used customer checks for subsequent transactions and did not maintain evidence of checks in
26 violation of section 23037, subdivision (a) and California Code of Regulations, title 10, section
27 2025, subdivision (c)(1). Lastly, the licensee made false or misleading statements in violation of
28 section 23037, subdivision (f).

IV

COMMISSISONER’S AUTHORITY TO REVOKE RESPONDENT’S CDDTL LICENSE

Section 23052 sets forth the grounds for a revocation of a CDDTL license and states:

The commissioner may suspend or revoke any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:

(a) The licensee has failed to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of this division.

(b) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.

CONCLUSION AND PRAYER

Complainant finds, by reason of the foregoing, that Respondent has violated sections 23007, 23023, 23024, 23026, 23035, 23036, 23037, as well as sections 2025 and 2030 of title 10 of the California Code of Regulations. Therefore, the Commissioner is justified pursuant to section 23052 in revoking Respondent’s California deferred deposit transaction license.

WHEREFORE IT IS PRAYED that the deferred deposit transaction license of Respondent, Sunshine Liquor, doing business as Sunshine Liquor, Inc., and also doing business as Sunshine Check Cashing be revoked pursuant to Financial Code section 23052.

Dated: July 9, 2007
San Francisco, California

Respectfully submitted,

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____

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